

**Call to Order:**

The meeting was called to order at 7:30 p.m. Present were Chair Joan Duff, members Vincent Chiozzi, Jay Doherty, and associate member Zach Bergeron; also present were Paul Materazzo, Director of Planning and Jacki Byerley, Planner.

**15 Stevens Street – Atria Marland Falls:**

Ms. Duff opened the public hearing on 15 Stevens Street, Atria Marland Falls, a Modification of Special Permit for Planned Development Mixed Use Multi-Family and a Modification of Site Plan Review.

Attorney Mark Johnson representing the applicant gave an overview of the project for the Board. He stated that Building 3 is a vacant building that was formerly used as offices. The applicant is looking to amend a previously issued Special Permit and Site Plan to renovate Building 3 to a residential use. Attorney Johnson handed out a memo from his colleague, Bob Lavoie, outlining the project and explaining requested waivers.

Paul Finger, of Paul Finger Associates, the applicant's engineer gave a short history of the site beginning in the mid-1800s when it was a manufacturing mill. He explained that Building No. 3 will need two small additions for a stairwell and a lobby. Access and egress to and from the building will be from the front and the rear. There will be no changes in the parking layout but there will be changes in allocation. They will be going before the Conservation Commission for an amended order of conditions. The utilities are existing in the building, and some utilities are tied to Buildings 1 and 2.

Attorney Johnson reviewed the two waivers that the applicant is requesting. One is to waive the requirement of 3,000 s.f. per unit. With the 129 current units and 13 additional units, they will be short 37,000 s.f. The second waiver is for an additional 7 parking spaces because they believe the 84 spaces onsite as well as the reserve parking are sufficient to handle the additional units.

Ms. Duff asked for a description of the units and Peter Schmidt of EGA Architects showed the design layout of the 4,000 s.f. building. The first floor will have three high end units and a club room. The second and third floors will each have five units. The units' square footages will be between 430 s.f. and 845 s.f. Each unit will have a small kitchenette, a bedroom and a bathroom. The basement will remain empty for flood storage. A combination louver and window will be used to allow for flood waters to come in to the basement and then leave. Ms. Duff asked where the water would vent out to, and Mr. Finger answered the Shawsheen River. He explained that Conservation refers to it as compensatory flood storage. The water comes in and then it leaves which equalizes the hydrostatic pressure on the walls and mitigates structural damage caused by flooding. Ms. Byerley added that there will also be a sump pump in the basement.

Mr. Doherty asked about prior evacuations. Jim Lane of Atria Senior Living stated that evacuations were necessary in the past because the gas meter would become submerged and would shut off so that they would not have any utilities. The gas meter has now been raised. The first floor of each building has never flooded. Mr. Finger added that the first floors of all the buildings are above flood elevations. Ms. Duff asked when the work to remove the Stevens

**15 Stevens Street – Atria Marland Falls (cont'd):**

Street dam will begin. Mr. Materazzo stated that permitting for it should happen within the next year. Mr. Finger stated that once the dam is removed it should cause improvements.

Mr. Chiozzi asked if the 37,000 square feet requested in the waiver, is the entirety of the 13 additional units and Attorney Johnson confirmed he was correct. Mr. Finger stated that if the building cannot be renovated it will be torn down. Mr. Lane added that the case can be made for smart growth because they will be adding seniors to the tax base as well as adding jobs to the community without using many Town resources. Attorney Johnson informed the Board that they had a letter from the Preservation Commission confirming their unanimous vote to support the project.

Mr. Bergeron asked what will be done to the outside of the building. Mr. Schmidt answered that an architect is working on canvassing all of the buildings and there will be repointing and new windows. Mr. Finger added that the rear of Building 3 once was tied to the now demolished Building No. 4, so work needs to be done where there were utility and other connections.

Mr. Chiozzi asked if they will be rented out as apartments. Mr. Lane explained that they will be assisted living rental apartments with leases. Most residents are in their low to mid eighties and require minor assistance with their day to day activities. The facility currently has 129 units with four registered drivers, and they are in the process of converting fifteen assisted living apartments to Alzheimer's care units.

Mr. Bergeron asked if the existing utilities were adequately sized. Mr. Finger stated that the building has a fire protection system, and the other utilities are more than adequate. Mr. Lane added that they will be going for LEED certification on the building and energy and water conservation will be part of that.

Ms. Byerley stated that at the IDR the Health Department wanted the sewer service to Building 3 to be tested. Mr. Finger stated that Dave Dargie said all they will have to do is look through the manhole to see if the sewer service will be adequate. He also stated that Police and Fire requested a flag pole to be moved and the applicant has agreed to move it and place a mountable curb on the island that helps with traffic flow.

Mr. Chiozzi asked if based on financing, there was any affordability component in the original requirements. Mr. Lane stated that 18% of the 142 total units will be affordable at 50% of the median area income. Mr. Chiozzi asked if the any of the new units will be affordable, and Mr. Lane answered that there will not. Mr. Chiozzi asked if the financing would require affordability and Mr. Lane stated that they are financing with equity.

Mr. Doherty asked about the number of staff and Mr. Lane answered that there were 40 employees on the largest shift. Some employees carpooling or take taxis. Mr. Doherty noted that sometimes it can be difficult to find a parking space. Mr. Lane agreed that they host a lot of events and sometimes parking can be tight. Ms. Byerley pointed out that the closest parking spaces are for residents, but not many residents drive. The applicant will submit a new configuration offering more visitor and less resident spaces. Mr. Lane stated that they are also

**15 Stevens Street – Atria Marland Falls (cont'd):**

moving the employee lounge to the back of the building encouraging employees to park there. Mr. Doherty asked if they had an agreement with the Post Office for overflow parking. Mr. Lane stated that they do in the evenings, and they run a shuttle to and from Shawsheen Plaza during weekend events.

Attorney Johnson stated that within the material the applicant feels that they have addressed all IDR comments. Ms. Byerley responded that there is still the issue of the response area for the Fire Department. They appreciate that the applicant removed the flag pole from the island, but the matter of distinguishing the two buildings still needs to be addressed. Mr. Finger felt this was an item that would be better addressed during construction time, along with key access and the knox box locations. My Byerley stated that she thinks the Fire Department just needs to understand that the applicant is willing to put knox boxes on location. She also stated that it was brought to her attention that the water line and the entrance to the vestibule are too close to each other. Mr. Finger stated that that they are currently having geotechnical testing done and any issues that come up will be addressed.

Maerita McDermott of 3 Powder Mill Square asked if the building will be for 60 and over, independent living. Mr. Lane stated that it is 62 and over, assisted living, so food, activities and free transportation within a 12-mile radius are included in the rent. It is licensed through the Executive Office of Elder Affairs. Ms. McDermott then stated that she is concerned because employees park at Powder Mill Square, and she has had difficulty finding parking at Atria when she has gone to visit on a regular day. Mr. Doherty asked if the grass area where Building No. 4 was could become parking in the future. Mr. Finger stated that he does not feel that it is needed, and right now some parking spaces are lost because of drainage control problems from Smithshire Estates. They are working with the Town to resolve those issues to free up more parking. Mr. Lane added that erosion from Smithshire Estates has taken out an area that was 6 parking spaces.

Ann Knowles of 51 Maple Avenue asked how long ago the building was last in use. Mr. Lane stated that it was abandoned in 1994. Ms. Knowles asked if they will need to do a complete new structure and systems. Mr. Schmidt stated that the building is structurally sound but the whole envelope will have to be new with a new roof, windows and insulation. They will be keeping all of the wood beams that they can.

On a motion by Mr. Bergeron seconded by Mr. Doherty the Board moved to continue the public hearings for Atria Marland Falls to February 25, 2014 at 7:45 P.M. **Vote:** Unanimous (4-0).

**Joint Meeting:**

Ms. Duff and Alex Vispoli, Chair of the Board of Selectmen opened the joint meeting of the Planning Board and the Board of Selectmen at 8:06 PM. Present were Ms. Duff, Planning Board members Vincent Chiozzi, Jay Doherty and Zachary Bergeron, Mr. Vispoli, Selectmen Paul Salafia and Dan Kowalski, also present were Paul Materazzo, Director of Planning, Jacki Byerley, Planner and Reginald Stapczynski, Town Manager.

**Mobile Food Vendor Bylaw:**

Ms. Duff opened the joint hearing on the Mobile Food Vendor Bylaw. Ms. Byerley stated that the Planning Board began discussing possible regulations for mobile vendors about a year ago. Right now, mobile vendors are licensed through Board of Health regulations and hawkers and peddlers licenses and must follow Town parking regulations. The Town Clerk and Town Counsel both agree that a Town Meeting vote is necessary to authorize the Board of Selectmen to set license regulations and fees.

Mr. Vispoli asked what the objective of the article is. Ms. Byerley stated that the objective has two parts. The first is to aid the Health Department so that inspectors will know where these mobile operations are located to perform inspections. The second part is to help the vendors, so that people will know where they are on a regular basis. Mr. Vispoli asked if the primary objective is to regulate where they are allowed to park. Ms. Byerley answered that it is to regulate where they park and for what length of time. The Board of Selectmen can choose to leave the operations as they are or they can designate an area for them to park for a longer period of time than the posted parking regulations. Mr. Vispoli asked if the motivation is to address complaints. Mr. Doherty answered that they are taking up parking spaces for downtown merchants, and there is nothing from stopping anyone from going downtown and opening any type of mobile business.

Mr. Salafia stated that he is concerned about the lack of regulations on the number of mobile vendors, and he doesn't want them taking away from merchants who are paying rent. Mr. Materazzo added that this article would set the table for Selectmen should it become an issue. Mr. Salafia asked if other Towns have regulations. Ms. Byerley answered that she has consulted regulations from Wellesley, Brookline, Cambridge and Norwich as well as some New Hampshire towns. In drafting the bylaw she would also like the input of other Boards, Town departments and the public. North Andover has a bylaw in place but they have not yet adopted the regulations. Ms. Duff stated that regulations would also involve more things than just parking such as disposal of trash and character checks for vendors. Mr. Vispoli asked if this would include ice cream trucks. Ms. Byerley stated that she would like it not to, but it is all dependent on what the Selectmen prefer. She sees these regulations as mainly for downtown. Mr. Salafia stated that it is also a safety issue. Ms. Duff added that there are people downtown who would like more oversight on where the vehicles are parking. Mr. Doherty stated that merchants need to be protected because if it gets out of control people are going to go out of business.

Ms. Byerley informed the Boards that Brookline does a lottery of available licenses, and any mobile vendor cannot be within so many feet of an establishment selling similar items. Mr. Salafia stated that he wants to protect those paying rent, and he doesn't want people spilling onto the streets waiting for a taco.

Ms. Byerley stated that she is using this meeting to gather ideas and input on how restrictive the Boards would like the regulations to be. Mr. Vispoli stated that he would like the Economic Development Council to be involved as the analysts. Mr. Materazzo agreed that vetting it through the EDC and talking to the community is a good way to shape it.

**Mobile Food Vendor Bylaw (cont'd):**

Mr. Vispoli asked if this would go to Town Meeting 2014. Ms. Byerley responded that the bylaw to authorize the Selectmen to set regulations would go to Town Meeting 2014. Mr. Vispoli then asked if it would be a zoning bylaw or a general bylaw and Ms. Byerley responded that it would be a general bylaw. Mr. Kowalski asked if it passed Town Meeting, if 100% of the authority to set the rules lies with the Selectmen or if it would ever have to go back to Town Meeting. Ms. Byerley confirmed that it would stay with the Selectmen. Mr. Salafia added that they may find that they don't need to set regulations.

Mark Stout of 161 Elm Street stated that he was the owner and operator of Mess Haul, a local food truck. He understands the concerns about parking and competitiveness. He informed the Board that he goes out of his way not to park in front of other food businesses. He also stated that the Board of Health process to meet all of their regulations is very difficult to get through, so there are quality trucks in Town. It is a good idea for the Town to only have a set number of licenses, but right now Andover has a good variety of food trucks, and variety should be taken in to consideration. He hopes that moving forward everyone can work together to promote business for the whole downtown area. He chose to do his business in Andover because it is where he and generations of his family were born and raised. He asked if they had a rough guess of the proposed areas of permanent spots. Ms. Byerley stated that she was working on them, but one idea was to designate an area near the train station for a breakfast area.

Mr. Chiozzi stated that he does not like a lottery idea because people are making large investments in these vehicles and could lose out on a license by the luck of the draw. Mr. Stout stated that Boston does a lottery, but it is a location lottery. Everyone can operate, but they may not get a prime location. Mr. Doherty asked how many trucks are currently in Andover and Mr. Stout told him there are three trucks. Mr. Chiozzi asked Mr. Stout about his schedule and locations. Mr. Stout answered that he is downtown once or twice a week. He has agreements to be in Dundee Park for lunch on Mondays and Wednesdays and at Mass School of Law for dinner on Monday and Thursday. He added that many downtown customers will place a food order and then run errands in other downtown businesses while their food is being prepared.

Nadine Levin, a resident of North Andover and owner of Pipe Dream Cupcakes, a mobile cupcake truck stated that she is in Town for about an hour, Wednesday through Saturday. She uses social media to let her followers know where she is parked and promotes whatever businesses she is parked near. This helps the economic development of the community. She also stated that she has had some customers come from as far away as Ipswich and Nashua, NH to Andover and those customers get to see what downtown Andover offers.

Mr. Vispoli asked Ms. Levin if she has to follow parking regulations in North Andover and she stated that she does. She also stated that she is part of the North Andover committee that is writing the food truck regulations. They are dealing with issues such as waste disposal, CORI checks, tables and chairs, etc. Mr. Chiozzi asked how many food trucks are operating in North Andover and Ms. Levin stated two, which is a 60% decrease from last year.

Mr. Stapczynski asked if this would cover catering trucks that you see on construction sites. Ms. Levin stated that canteen trucks and ice cream trucks are under different regulations in North

**Mobile Food Vendor Bylaw (cont'd):**

Andover. Mr. Chiozzi pointed out that canteen trucks are usually on private property. Mr. Stout stated that even private property is regulated by the Board of Health.

Ms. Levin asked if the group would consider forming a committee to draft the regulations. Ms. Byerley stated that public input would be sought before regulations are adopted. Mr. Vispoli added that he would like input from the Andover Business Community Association and the EDC. Ms. Duff added that it is important to not over-regulate but at the same time they want to make sure that they continue to have good vendors in Town.

The Boards decided to consult with the EDC and the ABCA before taking action on this warrant article.

**Medical Marijuana Overlay District:**

Ms. Duff opened the joint hearing on the Medical Marijuana Overlay District. Mr. Materazzo gave an overview of the Humanitarian Medical Use of Marijuana Act passed by a majority of voters in Massachusetts and Andover that came into effect in January 2013. He reviewed the proposed warrant article for Medical Marijuana Overlay Districts to be considered at Town Meeting 2014, and explained to the Board that the Attorney General has stated that cities and towns cannot enact a ban on Registered Medical Marijuana Facilities. He showed a map of where medical marijuana would be allowed Andover today as a medical use. He then showed four areas identified by the working group as possible areas to put an overlay.

Mr. Chiozzi asked why it would be allowed in those areas today and Mr. Materazzo explained that it is classified as a medical use, so it is allowed by right in any area zoned for medical use. Mr. Materazzo further identified the four proposed areas as a part of the ID2 district off of River Road, Doctor's Park on Haverhill Street, the ID2 district off of Dascomb Road and Lowell Junction Road.

Mr. Chiozzi asked if any farms in Town would be exempt from the zoning regulations to be able to grow the marijuana. Mr. Materazzo stated that agricultural uses today are exempt, but a farm would still have to apply to DPH for this use, and they would have to meet the requirements set forth by DPH. Ms. Duff pointed out that any growing facility has to be a secure building and not a greenhouse. Mr. Chiozzi suggested that for Town meeting, they make sure people aware of the agricultural use exemption so no one is under the impression that it would be totally limited to these four areas.

Mr. Materazzo brought up a point that Mr. Kowalski had raised regarding Doctors Park possibly being considered a place where children congregate. Mr. Vispoli asked if the overlay could be limited to one area and Mr. Materazzo answered that it could. Mr. Vispoli then asked if the businesses owners and residents of these proposed areas had been contacted. Mr. Materazzo stated that he has met with the businesses in the River Road area and the Dascomb Road area businesses are also aware of this. Mr. Vispoli asked if the people on River Road are in favor of this and Mr. Materazzo stated that he had only had contact with three people regarding this warrant article and they were all in favor of a complete ban on marijuana dispensaries.

**Medical Marijuana Overlay District (cont'd):**

Mr. Vispoli asked if they could try to pass one area now and then take up other areas at a later date. Mr. Materazzo stated that it was up to the Boards if they wanted to do separate maps or one map. Ms. Duff noted that they need to get at least one area through Town Meeting now. Mr. Vispoli questioned if it a better idea to put forward a less controversial area now and then potentially add more later. He doesn't agree with one map. Mr. Materazzo informed the Board that courtesy notices were sent out to those owning property in these districts for the formal Planning Board Public Hearing on February 25<sup>th</sup>. Mr. Vispoli then asked what area seems to be most locked in. Mr. Materazzo answered the area on Dascomb Road because it is an industrial property bounded by Interstate 93. The River Road area was discussed and Mr. Vispoli pointed out that it has had patterns of crime in the past. Mr. Materazzo stated that the Police Chief has assured him that all locations are acceptable.

Mr. Chiozzi asked about hours of operation and Mr. Materazzo stated that they could be conditioned in the Special Permit process. Mr. Stapczynski added that the hours of operation would not be in the bylaw.

Mr. Kowalski questioned if a moratorium could be passed if the overlay district does not. Mr. Stapczynski thought that the time to enact a moratorium has passed, but said he could check with Town Counsel. Mr. Materazzo noted that he had draft language available for a moratorium warrant article. Mr. Salafia stated that to protect the Town, they need to get something passed, and the more sites you have, the more chance for opposition. Mr. Materazzo stated that people in the industry have called specifically to inquire about Dascomb Road. Mr. Vispoli asked if they could come back with the top two locations. Ms. Duff felt that Doctors Park should be eliminated because of the amount of children that are there. Mr. Doherty noted that the YMCA is also down the street. Mr. Materazzo stated that Doctors Park was included because it seemed a logical choice for a medical use.

Mr. Salafia felt that it was important to get across at Town Meeting that without an overlay, this can go anywhere medical uses are allowed. Mr. Chiozzi asked if the Limited Service area where the adult use zone is located was considered. Ms. Duff responded that a nursery school is located at the IRS so it cannot go in that area. Mr. Stapczynski added that the Boston Sports club runs camps for children. Mr. Materazzo also informed the group that the Attorney General has ruled against communities who have used creative zoning to put it somewhere it cannot legally operate. Mr. Stapczynski asked why Frontage Road was not considered and Mr. Materazzo informed him that there is a daycare in the vicinity and it is close to a residential neighborhood.

Mr. Kowalski suggested that the Planning Board hold their public hearing and then come back with a recommendation for the Selectmen at a later date. He then asked if there was anyone lined up to go into any of these key locations. Mr. Materazzo stated that there was early interest in an area of Dascomb Road from Alternative Therapies. That group never put in an application with DPH for a location in Andover. Mr. Vispoli suggested that if any other group approaches the Town about a site before Town meeting, that it should be disclosed at Town Meeting.

**Medical Marijuana Overlay District (cont'd):**

The Boards discussed bringing two areas to Town Meeting on separate maps as well as drafting a warrant article for a moratorium. Mr. Materazzo stated that after the Public Hearing on the 25<sup>th</sup> he will report back to Mr. Stapczynski and Mr. Vispoli.

**Adjournment:** The meeting was adjourned at 9:06 p.m.